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17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 DEREK A. CAPOZZI,

20 No. EDCV 10-00239 AHM (DTB)

21 Plaintiff,

22 DEFENDANT'S STATUS REPORT

23 v.

24 UNITED STATES OF AMERICA,

25 Defendant.

26 Pursuant to this Court's Order, dated June 25, 2012,
27 Defendant, United States of America, files its Status Report.

28

SUMMARY OF PROCEEDINGS TO DATE AND
STATEMENT OF ISSUES RAISED BY THE CASE

29 On August 30, 2012, this Court approved Defendant's
30 Application for a Protective Order as to the production of the
31 Bureau of Prisons ("BOP") Current Post Orders, Statistics from
32 USP Victorville, the Tort Claim File, and the SIS File, which
33 Plaintiff requested in his discovery requests. As set forth in
34 the Protective Order, Plaintiff is currently on a writ to a

1 Kentucky county jail and is no longer housed in a Bureau of
2 Prisons ("BOP") facility. Accordingly, the Protective Order
3 provides that the discovery (and a viewing of the video
4 surveillance tape) will be produced once Plaintiff returns to BOP
5 custody. Additionally, Defendant is unable to depose Plaintiff
6 until he returns to a BOP facility. Defendant is unaware of when
7 Plaintiff will return to BOP custody. The case is essentially
8 "on hold" until he returns.

9 The sole issue raised by this case is whether the United
10 States is liable because a BOP correctional officer allegedly
11 failed to search an inmate after he set off a metal detector.
12 According to Plaintiff, an inmate set off the metal detector as
13 he walked through it, but the correctional officer did not search
14 him, and this inmate later attacked Plaintiff on the yard with a
15 knife that he pulled from his waistband. Defendant denies all
16 allegations.

17 **STATEMENT AS TO WHETHER ALL PARTIES HAVE BEEN SERVED**

18 The only defendant, the United States, has been served.

19 **STATEMENT AS TO WHETHER PLEADINGS WILL BE AMENDED/PARTIES ADDED**

20 Plaintiff has not indicated if he will seek to amend the
21 pleadings or add additional parties; however, in actions brought
22 under the Federal Tort Claims Act alleging negligence against a
23 federal agency or its employees, the United States is the only
24 proper party. 28 U.S.C § 2679.

25 **DESCRIPTION OF DISCOVERY COMPLETED AND**

26 **SCHEDULE FOR FUTURE DISCOVERY**

27 Plaintiff has served interrogatories and requests for
28 production on Defendant. Defendant has responded to the

1 interrogatories and also provided 1026 pages of documents. As
2 set forth above, Defendant has additional documents to provide to
3 Plaintiff subject to the Protective Order; however, he is not
4 currently in a BOP facility. Defendant will provide these
5 documents to Plaintiff and depose him once he returns to BOP
6 custody.

7 **CONTEMPLATED MOTIONS**

8 Defendant anticipates filing a Motion for Summary Judgment
9 which could be dispositive of the entire case. Defendant is
10 unable to provide a proposed date for the Motion because the
11 undersigned has no information as to when Plaintiff will be
12 returned to BOP custody. Defendant plans to take the deposition
13 of Plaintiff when he returns to a BOP facility, and then within
14 sixty to ninety days, file a Summary Judgment Motion.

15 **TRIAL ESTIMATE**

16 Pursuant to the Federal Tort Claims Act, Plaintiff is not
17 entitled to a jury trial. 28 U.S.C. § 2402. Defendant
18 anticipates that a court trial would take approximately three to
19 five court days.

20 **SETTLEMENT**

21 No settlement negotiations have taken place. Defendant
22 prefers to have a settlement conference with the Magistrate Judge
23 / / /
24 / / /
25
26
27
28

1 assigned to this case and if acceptable to the Court, Plaintiff
2 can participate by video teleconference.

3
4
5 DATED: September 11, 2012

Respectfully submitted,

6 ANDRÉ BIROTTÉ JR.
7 United States Attorney
8 LEON W. WEIDMAN
9 Assistant United States Attorney
10 Chief, Civil Division

11 /s/ Erika Johnson-Brooks
12 ERIKA JOHNSON-BROOKS
13 Assistant United States Attorney
14 Attorneys for Defendant